

EXHIBIT 5

C.A. No. 4:-17-CV-01749;
Alfred Dewayne Brown v. City of Houston, et al.

REPORTER'S RECORD

Volume 29 of 41 Volumes

Trial Court No. 1035159

Court of Appeals No. AP-75,294

THE STATE OF TEXAS : IN THE DISTRICT COURT OF
VS. : HARRIS COUNTY, T E X A S
ALFRED DeWAYNE BROWN : 351ST JUDICIAL DISTRICT

JURY TRIAL

On the 11th day of October, 2005, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Mark Kent Ellis, Judge presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

TONI GOUBEAUD, CSR NO. 5774
Official Court Reporter - 351st Judicial District
1201 Franklin, 14th Floor
Houston, Texas
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1 MR. RIZZO: Okay. Thank you.

2 MS. MULDROW: That's all I have,
3 Judge.

4 THE COURT: Okay.

5 You may step down, Mr. Wheat.

6 Call your next witness.

7 MR. RIZZO: May he be excused, Your
8 Honor.

9 MS. MULDROW: Of course. Good luck,
10 sir.

11 MR. RIZZO: State calls Lisa
12 Hubbard.

13 She has not been sworn, Your Honor.

14 THE BAILIFF: The witness needs to
15 be sworn in.

16 THE COURT: All right.

17 (Witness sworn.)

18 THE COURT: All right. Go ahead.

19 MR. RIZZO: Thank you.

20 ALISHA RENEE HUBBARD,
21 having been first duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. RIZZO:

25 Q. Would you state your name, please?

1 A. Alisha Renee Hubbard.

2 Q. And what do you go as?

3 A. Lisa.

4 Q. Lisa. And how old are you, ma'am?

5 A. Thirty-eight.

6 Q. Are you single or are you married?

7 A. I'm married.

8 Q. And could you pull the microphone just a
9 little bit down?

10 A. (Witness complies.)

11 Q. There you go. Thank you so much.

12 How long have you been married.

13 A. Eight years.

14 Q. And do you have any children?

15 A. One.

16 Q. How old is your child?

17 A. He's three.

18 Q. Are you working right now?

19 A. No.

20 Q. And do you have any health problems?

21 A. Yes.

22 Q. Would you tell the jury a list of some of
23 your health problems?

24 A. I have a tumor on the left side of my
25 brain, cancer, diabetic, high blood pressure.

1 Q. Okay. And are you also scheduled for
2 surgery on your brain --

3 A. Yes.

4 Q. -- as soon as this trial is over?

5 A. Yes.

6 Q. How far did you go in school?

7 A. Twelve.

8 Q. And where did you go to school?

9 A. Ross Sterling.

10 Q. I'm sorry, ma'am?

11 A. Ross Sterling.

12 Q. Sterling. Where do you live?

13 A. 5901 Selinsky.

14 Q. And is that commonly referred to as The
15 VA?

16 A. Yes, sir.

17 Q. And you've been there for how many years?

18 A. Four years now.

19 Q. And did you -- what is The VA -- the
20 initials of the VA, what does that stand for?

21 A. Villa Americana.

22 Q. Okay. So it's an apartment complex?

23 A. Yes.

24 Q. Does it go by any other names over there
25 at The VA?

1 A. Used to call them vicious animals.

2 Q. Vicious animals?

3 A. Uh-huh.

4 Q. Anything else?

5 A. Not that I know of.

6 Q. Dead End?

7 A. Oh, yeah, Dead End.

8 Q. Why are some of these terms used for that
9 apartment complex, ma'am?

10 A. I guess because it was so rough back in
11 the days.

12 Q. Has it cleaned up some actually since
13 this offense?

14 A. A little.

15 Q. A little bit. Is it still pretty rough?

16 A. A little.

17 Q. A little bit?

18 A. Uh-huh.

19 Q. Have they also put in some cameras to try
20 to clean it up?

21 A. Yes, sir.

22 Q. Let me ask you if you were living there
23 back on April 3rd, 2003?

24 A. Yes, sir.

25 Q. About 8:00 o'clock in the morning,

1 approximately, did you see -- oh, let me ask you,
2 do you know somebody by the name of Doby?

3 A. Yes.

4 Q. Do you see him in the court today?

5 A. Yes.

6 Q. Could you point to him and describe an
7 article of clothing?

8 A. Right there with the gray striped
9 shirt -- I mean, jacket with the light -- I assume
10 it's light blue. I'm partially blind in my left
11 eye.

12 Q. Pardon me?

13 A. I'm partially blind in my left eye so I
14 can't really see the color.

15 Q. Okay. From the two men there, would it
16 be the right or left?

17 A. That would be my left.

18 Q. I'll stand behind. You tell me which one
19 he is. Is this Doby?

20 A. No.

21 Q. Is this Doby?

22 A. Uh-huh.

23 MR. RIZZO: Your Honor, may the
24 record reflect this witness has identified the
25 Defendant in this case.

1 THE COURT: All right.

2 Q. (By Mr. Rizzo) Do you know him as Doby
3 or DeWayne or what do you know him as?

4 A. Doby.

5 Q. And do you know -- do you know somebody
6 by the name of Shon?

7 A. Yes.

8 Q. And is that Shon Glaspie?

9 A. Yes.

10 Q. And did you know Ghetto?

11 A. Yes.

12 Q. And that is Elijah Joubert?

13 A. Yes.

14 MR. RIZZO: May I approach this
15 witness, Your Honor?

16 THE COURT: Yes.

17 Q. (By Mr. Rizzo) I'm going to show you
18 what's marked State's Exhibit No. 147. You've
19 seen this before, have you not?

20 A. Yes, sir.

21 Q. And does this fairly and accurately
22 depict all three of the people we just named?

23 A. Yes.

24 MR. RIZZO: Your Honor, after
25 tendering to Defense counsel, State will offer

1 State's Exhibit No. 147 into evidence.

2 MS. MULDROW: May I approach, Your Honor.

3 THE COURT: Okay.

4 (Bench conference:)

5 MS. MULDROW: Two things. I believe
6 it goes back to the I.D. hearing, but secondly,
7 more importantly, I'm going to have to reserve my
8 cross because we asked Mr. Rizzo who would be
9 testifying and I specifically asked him if the
10 Hubbard sisters would be testifying. He did not
11 list them as witnesses and he specifically told me
12 no. So I won't be ready to pursue the cross that
13 I would have been ready for had I been given
14 notice.

15 MR. RIZZO: The only thing I can say
16 is I'm doing the best bringing as many people as
17 we can. We put through four -- three or four on
18 fast this morning. So I don't even know how
19 many -- I did tell you that we thought we would
20 put the gun people on.

21 MS. MULDROW: Right.

22 MR. RIZZO: That is true. That is
23 true.

24 MR. LAFON: For the record, it was
25 intended that we were going to call the Medical

1 Examiner today.

2 MR. RIZZO: She's sick.

3 MR. LAFON: She's sick and was not
4 able to come in.

5 THE COURT: That doesn't last that
6 long. It's not that complicated.

7 MR. RIZZO: I guess I should put on
8 the record, though, that there is an -- I mean,
9 it's not a total surprise. As a courtesy, of
10 course, I would not try to blind side Defense
11 counsel and tell which one was coming and which
12 one wasn't, but we just -- we moved faster than we
13 could. And also there's no M.E. so what she's
14 saying is correct.

15 MS. MULDROW: I'll do what I can,
16 but if I have to reserve, I'm letting the Court
17 know I won't be able to complete it if I get
18 there. If I see that I get there, I'm just
19 letting you know that's the reason why.

20 THE COURT: What have you not done.

21 MS. MULDROW: She gave three
22 different statements. She gave me the names of
23 six witnesses. I worked on looking at Grand Jury,
24 former testimony, police reports as well as any
25 written or oral statements that they made last

1 night. I would have done that for this witness.

2 THE COURT: Except for the Grand
3 Jury testimony, you've had for two years.

4 MS. MULDROW: No. The Grand Jury
5 testimony was released.

6 THE COURT: I said all but the Grand
7 Jury testimony you've had for two years.

8 MS. MULDROW: I understand, Judge,
9 I'm just letting you know that. That's all I'm
10 saying. We'll proceed.

11 (Proceedings continued:)

12 THE COURT: Okay. Do you have any
13 objection to 147.

14 MS. MULDROW: Other than previously
15 mentioned, Your Honor, regarding I.D.

16 THE COURT: Overruled. 147 is admitted.

17 (State's Exhibit No. 147 offered and
18 admitted.)

19 DIRECT EXAMINATION CONTINUED

20 BY MR. RIZZO:

21 Q. Let me talk to you -- how long have you
22 known, first of all, the Defendant in this case,
23 Doby?

24 A. I don't really know Doby. I know of
25 Doby.

1 Q. Have you ever spoke to him before at The
2 VA?

3 A. As far as speaking, hi, bye.

4 Q. So you know him by face? You know him by
5 name?

6 A. Uh-huh.

7 Q. And then how about Ghetto?

8 A. Yes, I know Ghetto.

9 Q. And how is it -- how long did you know
10 Ghetto?

11 A. Ever since '96.

12 Q. Okay. And how was it that you first met
13 Ghetto?

14 A. Me and him got into a confrontation.

15 Q. You got into a confrontation?

16 A. Yes.

17 Q. Okay. Did you win or lose?

18 A. I don't know.

19 Q. All right. And did you also -- how long
20 have you known Shon?

21 A. Since '90 -- I'll say '96, too.

22 Q. '96, also?

23 A. Uh-huh.

24 Q. And these are all three you've known from
25 The VA?

1 A. Uh-huh. Yes, sir.

2 Q. Okay. And how many of them actually
3 lived in The VA? Did Ghetto live in The VA or he
4 would just hang there?

5 A. I think Ghetto just hung in The VA. I
6 don't know if he actually lived in there. I know
7 Shon's mother used to live there.

8 Q. Shon's mom?

9 A. Yes.

10 Q. And then how often did you see these
11 guys -- before this offense, of course, how often
12 would you see them at The VA?

13 A. Shon and Ghetto I would see them every
14 other day.

15 Q. Okay. And Doby?

16 A. I barely seen Doby over there.

17 Q. Okay. Were these all three friends?

18 A. Yes.

19 Q. Let me ask you, also, on April 3rd of
20 2003, at about 8:00 in the morning, did you see
21 all three of them out there in the parking lot?

22 A. Yes.

23 Q. And where -- where were they located when
24 you first saw them?

25 A. It was -- well, the car was parked in the

1 parking lot, but they was standing behind the car
2 like up on the sidewalk slab.

3 Q. Okay. Who -- what kind -- which car was
4 it?

5 A. I think it was the Lumina that was out
6 there, the Lumina. I don't remember.

7 Q. How many cars did Shon drive back then?

8 A. Shon, I was always see him in two cars.

9 Q. What cars would they have been?

10 A. The Lumina and the Grand Am.

11 Q. And the Grand Am --

12 MR. RIZZO: May I approach this witness.

13 THE COURT: Yes.

14 Q. (By Mr. Rizzo) I'm showing you what's
15 marked State's 159. Is that Shon -- does that
16 look like Shon's Grand Am?

17 A. Yes.

18 Q. Okay. And he also had a white -- or
19 drove another white Lumina?

20 A. Yes, sir.

21 Q. All three, were they standing behind the
22 vehicles?

23 A. When I came out the door, Ghetto was
24 standing behind it. Doby was standing behind the
25 car, but like up -- farther up by the slab. Shon

1 was on the side of the car on the driver's side.

2 Q. Okay. And were they talking?

3 A. Shon and Ghetto was talking.

4 Q. And Doby was standing up at the car, but
5 on the other side of it?

6 A. Uh-huh.

7 Q. All right. And you have to answer yes or
8 no?

9 A. Yes, sir.

10 Q. What was Shon saying?

11 A. Shon was looking over to Ghetto and he
12 asked Ghetto was we -- no, Ghetto asked Shon, "Are
13 you ready to go do this".

14 Q. Okay?

15 A. And when I walked clearly close by Shon,
16 they all spoke and I just went into my godsister's
17 house.

18 Q. They spoke to you?

19 A. Uh-huh.

20 Q. You have to answer yes or no?

21 A. Oh, yes, sir.

22 Q. All right?

23 A. My apologies.

24 Q. Now, when you -- you said was it Shon or
25 was it Ghetto that made the thing -- the comment,

1 "Are you getting ready to go do this"?

2 A. Ghetto.

3 Q. Ghetto. Did either -- any of these three
4 have a job?

5 A. Not that I knew of.

6 Q. Did you ever know of them ever having a job?

7 A. No.

8 Q. And was it typical -- did you know
9 whether it was typical to see them up that early
10 in the morning?

11 A. No, it wasn't.

12 Q. Now, did Ghetto answer Shon are you --
13 when he said -- when Shon said, "Are you ready to
14 go do this"?

15 A. I don't remember if he did or not.

16 Q. Did -- you can't remember if Ghetto made
17 any comments?

18 A. No, I can't remember that.

19 Q. Okay. Do you remember -- when you heard
20 them making that comment, did you have an opinion
21 as to what they were saying?

22 A. Yeah.

23 Q. What was it?

24 MS. MULDROW: Relevance, Your Honor.

25 THE COURT: Overruled.

1 A. I knew they was about to go do something
2 they didn't have any business doing.

3 Q. Something illegal?

4 MS. MULDROW: Speculation, Your
5 Honor.

6 THE COURT: Sustained.

7 Q. (By Mr. Rizzo) What did you mean
8 something that they had no business doing? What
9 specifically were you -- did you think -- was in
10 your mind?

11 MS. MULDROW: Reurge it.

12 THE COURT: Sustained as to
13 speculation.

14 Q. (By Mr. Rizzo) Okay. You said that you
15 thought they were going to be doing something they
16 shouldn't be doing. What did you do after you
17 heard this and where did you go?

18 A. I went into my godsister's house, Tonya
19 Barnes (sp.ph.) and we sat in there, we cooked
20 breakfast and we was watching T.V.

21 Q. All right. Now, after -- did you see
22 these three guys again at that -- within the next
23 few minutes or is that the last you saw them at
24 that point?

25 A. When I came back outside of my door --

1 outside of Tonya Barnes' door, that was about, I'd
2 say, about 30 minutes after going in the door
3 because I had to go back and get something from my
4 house, I seen Shon by the driver door and he was
5 loading his clips in a gun.

6 Q. Did you ever see his gun before?

7 A. Yeah.

8 Q. Could you describe the gun that Shon
9 carried?

10 A. Shon had a -- I think it was a .45
11 or .357. It looked like one of them. It was
12 silver with, like, a black handle.

13 Q. Do you remember him -- did he carry it in
14 anything?

15 A. In a silver briefcase.

16 MR. RIZZO: May I approach this
17 witness?

18 THE COURT: Yes.

19 Q. (By Mr. Rizzo) I'm going to hand you
20 what's marked State's Exhibit 189 and ask if you
21 can identify this?

22 A. Yes.

23 Q. What is this?

24 A. This is the briefcase where they put,
25 like, Jordan shoes in or something.

1 Q. Okay. Does this look like the briefcase
2 that Shon carried?

3 A. Yes.

4 Q. Do you know what he kept inside this
5 briefcase?

6 A. His gun.

7 Q. And the gun you're referring to, did it
8 have anything unusual on it?

9 A. If it did, I didn't really pay attention
10 to it.

11 Q. I'm sorry, ma'am. I can't hear you?

12 A. No, I didn't really pay attention to it.

13 MR. RIZZO: May I approach this
14 witness.

15 THE COURT: Yes.

16 (Bailiff checking weapon.)

17 THE BAILIFF: It's clear, Judge.

18 THE COURT: All right.

19 Q. (By Mr. Rizzo) I'm going to hand you
20 what's marked State's 215, and ask if you
21 recognize that?

22 A. Yes.

23 Q. And what is that?

24 A. That's a .45.

25 Q. Does this look like Shon's gun?

1 A. The built-in infrared -- yes.

2 Q. And does it have something unusual that
3 you would recognize as to be Shon's gun?

4 A. With the built-in infrared beam on it.

5 Q. Okay. So you said that you saw him with
6 the gun?

7 A. Yes.

8 Q. And what was he doing?

9 A. He had already loaded one clip and he put
10 it in the gun. He load up the second clip and he
11 put it back -- the second clip in the briefcase.

12 Q. Are you referring to (indicating)?

13 A. Yes.

14 Q. He put bullets in the clip?

15 A. Yes.

16 Q. And then he put the clip in
17 (demonstrating with weapon)?

18 A. Yes.

19 Q. And then what did he do with that second
20 clip?

21 A. The second clip, he took the bullets out
22 the briefcase, he load them up. When he load the
23 second clip up, he put it back in the briefcase.

24 Q. Okay. Approximately noon did you talk to
25 someone? Did you have an occasion to talk to

1 Ju-Ju?

2 A. Yes.

3 Q. And after you spoke with Ju-Ju -- who's
4 Ju-Ju by the way?

5 A. Ju-Ju is the guy that hangs around in The
6 VA.

7 Q. And Ju-Ju, is he outside waiting to
8 testify?

9 A. Yes.

10 Q. Ju-Ju has a -- how do I describe this?
11 Ju-Ju's got an alcohol problem?

12 A. I guess, yes.

13 Q. Does he -- do you see him not drunk very
14 often?

15 A. Yes.

16 Q. Oh, you do. Okay. Early morning?

17 A. In the evening time.

18 Q. Okay. Now, after you talked to Ju-Ju,
19 where did you go?

20 A. After I talked to Ju-Ju, I went down the
21 driveway to a meat truck.

22 Q. Yes?

23 A. And I was getting some meat off the
24 truck.

25 Q. After you got the meat, where did you go?

1 A. I went back in my house, combed my hair.
2 And at that time my sister pulled up -- no, she
3 called me. And we was talking on the phone.

4 Q. Now, what time would that have been,
5 approximately? Would it have been morning?
6 Afternoon?

7 A. No, my sister called me. It was
8 approximately about 1:00, 1:30.

9 Q. And did your sister -- is that LaTonya?

10 A. Yes.

11 Q. Did she and Letisha ever show up at The
12 VA?

13 A. Yes.

14 Q. And did you talk to them?

15 A. Yes.

16 Q. What did you talk about?

17 A. The shooting at the -- at the check
18 cashing place.

19 Q. And was the shooting that occurred that
20 day at the check cashing place, was that big news
21 at The VA?

22 A. Yes.

23 Q. Was The VA -- by midafternoon was that
24 place buzzing with police officers or not yet?

25 A. I don't think not yet. I don't remember.

1 Q. Okay. Was there a lot of talk about it,
2 though?

3 A. Yes.

4 Q. And without saying what they said, what
5 were you talking about?

6 A. I told my sister that I had seen them out
7 there that morning. I told her what I had
8 overheard and I told her that Ju-Ju had came up to
9 me after I got out the shower and told me about
10 that they really went and did it. And that was
11 basically it.

12 Q. And so you talked to your sister about
13 that. And what did you want to do?

14 A. I told her I was going downtown to let
15 them know.

16 Q. Turn them in?

17 A. Uh-huh.

18 Q. Did you -- why were you going to turn
19 them in?

20 A. Because I knew of her. I didn't know
21 her, but I knew of her from my old neighborhood
22 round by Crestmont and Belfort and Martin Luther
23 King. We all grew up in the same neighborhood.
24 And she had just had a baby.

25 Q. You're talking about Ms. Jones?

1 A. Yes.

2 Q. And that was the reason you wanted to
3 turn them in?

4 A. Yes.

5 Q. Okay. Now, did you ever call HPD?

6 A. Yes, I did.

7 Q. And who did you talk to?

8 A. I think it was Sergeant Kennedy.

9 Q. Did you -- when you first called, did you
10 give the names of three people?

11 A. Yes, I did.

12 Q. And what three people did you give when
13 you first called?

14 A. Shon, Ghetto and the first one was Deuce.

15 Q. Okay. Now, Deuce, that's not this guy,
16 Doby, is it?

17 A. No.

18 Q. And why did you give them Deuce's name?

19 A. This picture on the T.V. that they were
20 showing it looked like Deuce, but it wasn't Deuce.

21 Q. It wasn't Deuce?

22 A. No.

23 Q. Okay. You were not at the scene of the
24 offense itself?

25 A. No.

1 Q. Now, you had seen all three of them
2 together that morning at a time when they were
3 loading up or at least Shon was loading up his
4 gun?

5 A. Yes.

6 Q. And there was talk about going to do
7 something --

8 MS. MULDROW: Leading, Your Honor.

9 THE COURT: Sustained. Do not lead
10 your witness.

11 Q. (By Mr. Rizzo) The question I had was
12 why would you give Deuce's name when you saw those
13 three guys together?

14 A. Because Deuce was out there that morning.
15 I just didn't remember where he went or whereabouts
16 he was. But he was out there talking with Shon.
17 What about, I don't know.

18 Q. Okay. Was he at the car when they were
19 loading up the gun, though?

20 A. No, I didn't see him at the car then.

21 Q. Was he at the car when they were talking
22 about making that statement?

23 A. No.

24 Q. Did you give a statement to the police?

25 A. Yes, I did.

1 Q. And then did you go home?

2 A. Yes.

3 Q. Did you -- after that did you try and
4 help the police in locating the guns that were
5 used in the offense?

6 A. Yes.

7 Q. And who did you talk to concerning that?

8 A. Sergeant Kennedy.

9 Q. Okay. About two weeks later did you get
10 some kind of a reward for doing it?

11 A. Yes, but it wasn't two weeks later.

12 Q. How long later was it?

13 A. I think it was like a month later.

14 Q. What did you get?

15 A. \$10,000.

16 Q. 10,000 from where?

17 A. From CrimeStopper's.

18 Q. And did you -- did you know at the time
19 you gave the statement that you were going to get
20 a reward?

21 A. No.

22 Q. Was it in your mind at all?

23 A. No.

24 MR. RIZZO: Pass the witness.

25 THE COURT: Ms. Muldrow.

1 CROSS-EXAMINATION

2 BY MS. MULDROW:

3 Q. Good morning, ma'am?

4 A. Good morning.

5 Q. And you gave a written statement at 3:30
6 p.m. on the day of the ACE robbery --

7 A. Yes, ma'am.

8 Q. -- when Ms. Jones was killed?

9 And you then gave a statement the
10 day you saw a lineup and for the first time saw
11 Mr. Doby in the lineup.

12 A. Yes, ma'am.

13 Q. You didn't testify before the Grand Jury,
14 did you?

15 A. No, ma'am.

16 Q. But you have testified previously?

17 A. Yes, ma'am.

18 Q. Give me a moment. I'm going to pull out
19 your statements?

20 MR. RIZZO: For purposes of the
21 record, I'm handing Defense counsel a copy of a
22 written statement that was given on 4/3 at 3:30 as
23 well as prior testimony, a transcript.

24 THE COURT: All right.

25 Q. (By Ms. Muldrow) Ms. Hubbard, did you

1 have an opportunity to review your original
2 statement, the statement you gave on the day the
3 ACE robbery occurred?

4 A. You mean the first statement?

5 Q. The very first statement, ma'am?

6 A. Yes, ma'am.

7 Q. You've had a chance to read it before you
8 testified today? Did Mr. Rizzo cover your first
9 statement at all before you took the stand today?

10 A. He called me in his office, yes.

11 Q. And did you have an opportunity to read
12 your statement?

13 A. Yes, I did.

14 Q. Okay. And you definitely saw Deuce that
15 morning out there talking with Shon?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Oh, yes, ma'am.

19 Q. All right. And I believe you told
20 Mr. Rizzo you don't know what he was talking with
21 Shon about?

22 A. Yes, ma'am.

23 Q. You described Deuce as being about
24 five-seven; is that correct?

25 A. Yes, ma'am.

1 Q. Weighs about 225?

2 A. Yes, ma'am.

3 MR. RIZZO: For purposes of the
4 record, Your Honor, I'm tendering to Defense
5 counsel the third statement.

6 THE COURT: Okay.

7 Q. (By Ms. Muldrow) And I believe on your
8 statement on April the 3rd, you told the police
9 that Ju-Ju came by your apartment earlier that
10 morning around 11:15 while you were watching
11 "Family Feud"?

12 A. No, I told them it was 12:00 -- that
13 noon. That's what time "Family Feud" come on.

14 Q. I wouldn't know so I'm just going to
15 tender your statement.

16 Why don't you read right there
17 (indicating)? And if you need to reread the whole
18 statement, Ms. Hubbard, feel free to do so, to
19 yourself.

20 A. (Witness reviewing document.) This is
21 not correct (indicating).

22 Q. That particular part. Okay. I'll ask
23 about it. Everything else -- read the next line?

24 MR. RIZZO: I'm sorry. I can't
25 hear.

1 MS. MULDROW: Well, I was going to
2 ask her about it, but I don't want to mark on the
3 statement.

4 A. (Witness reviewing document.)

5 Q. (By Ms. Muldrow) And you can use these
6 stickies -- thank goodness for Post-it's -- any
7 place where you want me to ask you about something
8 that you don't agree with.

9 A. (Witness continued reviewing document.)
10 Did you want me to go ahead and read this whole
11 page, too?

12 Q. Yes. Go ahead and finish reading the
13 whole thing.

14 A. (Witness continued reviewing document.)

15 Q. Is that it?

16 A. Uh-huh.

17 Q. So was it noon or 11:15 or do you know?

18 A. It was noon, at 12:00.

19 Q. So if you told the police officer on that
20 very day that it was at 11:15 in the morning, that
21 was off by about 45 minutes?

22 A. Yes, ma'am.

23 Q. All right. But at any rate, Ju-Ju -- and
24 you don't know his real name, but Ju-Ju came over
25 to talk to you?

1 A. Yes, ma'am.

2 Q. Ju-Ju asked you if you knew Shon --

3 MR. RIZZO: Objection, hearsay.

4 THE COURT: Sustained.

5 Q. (By Ms. Muldrow) You got your
6 information from Ju-Ju?

7 MR. RIZZO: Objection, hearsay, Your
8 Honor.

9 THE COURT: Sustained.

10 Q. (By Ms. Muldrow) And the reason why you
11 picked Deuce was based on a conversation you had
12 with Ju-Ju?

13 A. No, not just based on the conversation I
14 had with Ju-Ju, because I had seen him out there
15 that morning and then after I talked to Ju-Ju.

16 Q. Precisely. Okay. In fact, you told the
17 police in addition to Ju-Ju's height -- give me
18 one moment -- that you saw Deuce and Ghetto get
19 into the Grand Am -- into the Grand Am that Shon
20 was in?

21 A. No.

22 Q. You didn't? Excuse me. Shon was in the
23 Lumina?

24 A. Uh-huh. Yes, ma'am.

25 Q. And Deuce and Ghetto got into the Grand

1 Am and Deuce was driving?

2 A. No, ma'am.

3 Q. I want you to read this paragraph
4 starting "when" and then stop at "morning."

5 A. Okay. (Witness reviewing document.)

6 No, ma'am. I did not give that
7 statement.

8 Q. Do you know what a notary public is?

9 A. Yes.

10 Q. Okay. That's somebody that puts a stamp
11 on it and you swear that you're the same person
12 who appeared and signed a particular sheet of
13 paper?

14 A. (Nods head.)

15 Q. All right. I want you to look at this
16 exhibit. Okay?

17 MS. MULDROW: And for purposes of
18 the record it will be a Defense exhibit.

19 (Defendant's Exhibit No. 2 marked.)

20 Q. (By Ms. Muldrow) Do you remember seeing
21 Defendant's Exhibit No. 2, this witness statement?
22 Do you remember looking at this?

23 A. Yes, ma'am, but I didn't read it. I just
24 signed it. We was at the police station to about
25 8:00, 8:30 at night and I was tired. I signed it

1 and notarized it. I assumed they would put down
2 what I gave them.

3 Q. All right. And do you remember starting
4 around 3:30?

5 A. Yes.

6 Q. Okay. Do you remember signing each
7 sheet?

8 A. Yes.

9 Q. They didn't give you an opportunity to
10 read?

11 A. I didn't read it. I just signed it and
12 that was it.

13 Q. They didn't give you an opportunity?

14 A. Yes, they gave me an opportunity to read
15 it, but I did not read it. I chose not to. I was
16 hurting. I was tired. I was ready to go home.

17 Q. Okay. So you didn't know if he had typed
18 it incorrectly?

19 A. No, I didn't.

20 Q. And you would agree with me if you -- if
21 there was a statement in there about you watching
22 as Deuce and Ghetto got into -- getting into a
23 Grand Am and Deuce driving, that's something that
24 you would have recognized as being --

25 A. Yes ma'am.

1 Q. -- truthful or not true, correct?

2 A. Yes, ma'am.

3 Q. Okay. And you didn't correct -- you
4 didn't correct this on this form, did you?

5 A. What you mean?

6 Q. You didn't line it out as being untrue?

7 A. No, ma'am.

8 Q. You signed it? You signed this page?

9 A. I signed it.

10 Q. You signed each page, didn't you?

11 A. Yes, ma'am.

12 Q. And it appears that there's a notary
13 public's signature --

14 A. Yes, ma'am.

15 Q. -- on each page underneath your
16 signature, isn't there?

17 A. Yes, ma'am.

18 Q. And at the very end you swore you were
19 told about the offense of perjury?

20 A. Yes, ma'am.

21 Q. And you were told that a person commits
22 the offense of perjury if with the intent to
23 deceive -- that means to lie --

24 A. Uh-huh.

25 Q. -- and with knowledge of the

1 statements -- meaning you make a false statement
2 under oath that you swear to be truth of a false
3 statement previously made. You understand that?

4 A. Yes.

5 Q. And you signed your name?

6 A. Yes.

7 Q. And it was sworn to by this notary
8 public?

9 A. Yes.

10 Q. Okay. And you signed your name on it,
11 correct?

12 A. Didn't I say yes?

13 Q. Did you sign your name on it?

14 A. Yes.

15 MS. MULDROW: I'm going to offer
16 Defendant's Exhibit No. 2, Your Honor.

17 MR. RIZZO: Can we approach the
18 bench, Your Honor.

19 THE COURT: Yes.

20 (Bench conference:)

21 MR. RIZZO: Your Honor, it's a
22 sleazy trick Defense counsel is doing by
23 attempting to offer something she knows is
24 inadmissible, she knows is hearsay in front of
25 this jury and requiring me to object to it in

1 front of the jury. I object to not only the
2 introduction of that evidence, but also Defense
3 counsel offering something that she knows is
4 inadmissible forcing the State to be -- to object
5 to it in front of the jury. First year law
6 students know that's not admissible.

7 THE COURT: I sustain the objection.

8 (Proceedings continued:)

9 THE COURT: Please retire to the
10 jury room.

11 THE BAILIFF: All rise.

12 (Jury retired.)

13 THE COURT: Be seated. Approach the
14 bench.

15 (Bench conference:)

16 THE COURT: Okay. What's your
17 objection.

18 MR. RIZZO: The objection is
19 hearsay.

20 THE COURT: Sustained.

21 You know better than that. Anybody
22 knows better than that. No witness statements are
23 admissible. They're hearsay.

24 MS. MULDROW: May I proceed?

25 THE COURT: Sure.

1 (Short recess.)

2 THE BAILIFF: All rise.

3 (Jury seated.)

4 THE COURT: Ms. Muldrow.

5 MS. MULDROW: Thank you.

6 CROSS-EXAMINATION CONTINUED

7 BY MS. MULDROW:

8 Q. I believe you mentioned that Ghetto,
9 Deuce and Shon all three hang around Nikki's
10 apartment at -- I think her apartment is 250. Do
11 you remember saying that?

12 A. 253.

13 Q. 253. The statement has 250?

14 A. 253.

15 Q. All right. But did you say that?

16 A. 253.

17 Q. I'm sorry, ma'am. Did you say that all
18 three of them, Deuce, Ghetto and Shon, hang around
19 Nikki's apartment?

20 A. Yes, ma'am.

21 Q. Do you recall also saying that when you
22 saw the three of those guys on that morning, that
23 Shon had his .45 lying on the hood of the Lumina?

24 A. Yes.

25 Q. Did you ever know Deuce to have a gun?

1 A. If he did, I didn't see it.

2 Q. Not on that day. Have you ever known him
3 to handle a gun, Deuce?

4 A. Have I ever known him to handle one or
5 have one?

6 Q. Both.

7 A. Yes.

8 Q. Any particular kind you've ever seen him
9 with?

10 A. No, ma'am.

11 Q. All right. In fact, in your statement
12 you stated that you know that Deuce has a gun, do
13 you remember saying that, but you didn't know what
14 kind?

15 A. I don't remember if I said that or not.

16 Q. All right. Let me show it to you, ma'am.
17 Right here (indicating)?

18 A. (Witness reviewing document.)

19 Q. Do you remember saying that now, ma'am?

20 A. Yes, ma'am.

21 Q. And when you saw Shon with his .45, you
22 said that you saw him loading clips with bullets?

23 A. Yes, ma'am.

24 Q. Okay. And Deuce and Ghetto were near by?

25 A. Well, Shon was loading the clip. Ghetto

1 was right there. Deuce was not out there.

2 Q. Where was Deuce?

3 A. I assume he left.

4 Q. So, if your statement says that Deuce and
5 Ghetto got into the Grand Am together --

6 A. Nope. No, I did not make that statement.

7 Q. It's just in here?

8 A. Thank you. Because I did not make it.

9 Q. And the part about Shon getting into the
10 Lumina, do you remember saying that?

11 A. Yes.

12 Q. Do you remember also saying that Deuce
13 drove off with Shon following him?

14 A. No.

15 Q. You don't remember that part?

16 A. No.

17 Q. That would be something critical to
18 remember, wouldn't you agree?

19 A. Yes, ma'am.

20 Q. Okay. And that this was shortly after
21 8:00 a.m. on this morning, meaning April the 3rd,
22 when they -- they drove off?

23 A. Yes, ma'am.

24 Q. Okay. And you specifically remember
25 saying that?

1 A. Saying which part?

2 Q. With reference to the statement that you
3 gave on the morning -- excuse me -- the afternoon
4 of April the 3rd of 2003, "this was shortly after
5 8:00 a.m. this morning when they drove off"?

6 A. Drove off. "They" wasn't meaning Deuce.

7 Q. You just meant?

8 A. "They," Shon and Ghetto.

9 Q. So this part about Deuce mentioned three
10 times in that paragraph doesn't stand out for you?

11 A. No, ma'am.

12 Q. In fact, there are essentially three
13 pages of your conversations with this police
14 officer; is that correct?

15 A. Yes, ma'am.

16 Q. Sergeant Kennedy?

17 A. Yes, ma'am.

18 Q. All right. And let's look on Page 1.
19 Let's see the number of times you mention the word
20 "Deuce" in this statement?

21 A. Uh-huh.

22 Q. Two times on Page 1, would you agree --

23 A. Uh-huh.

24 Q. -- Deuce's name is brought up?

25 And there's at least one time where

1 you mention you knowing all three of these guys
2 from the apartment complex.

3 A. Yes.

4 Q. Okay. And all three of them do certain
5 illegal activity?

6 A. Two for sure.

7 Q. Okay. I'm talking about what's on your
8 statement --

9 A. Uh-huh. I know.

10 Q. -- it says all three, doesn't it?

11 A. Uh-huh.

12 Q. So that's two times that you mention the
13 word "three," correct?

14 A. Yes.

15 Q. Okay. And on Page 2 you mention the
16 description of Shon, six-three, skinny, loves --
17 carries both a .45 and an Uzi?

18 A. Not an Uzi. A .45.

19 Q. Okay. Read this (indicating).

20 A. .45. The Uzi, no.

21 Q. But it's in your statement?

22 A. Yes.

23 Q. And you also -- in your statement both
24 guns are always kept in the briefcase?

25 A. Yes.

1 Q. You mentioned that Ghetto carries a .45
2 and a .357. That's in your statement?

3 A. Yes.

4 Q. Okay. Go to Page 2 -- I mean, excuse me,
5 Page 3. Let's count Deuce. Five times Deuce's
6 name is mentioned on Page 3; is that correct?

7 A. Yes.

8 Q. Zero times for Alfred Brown or Doby;
9 isn't that correct?

10 A. Yes.

11 Q. In fact, it wasn't until you went to a
12 lineup two days later and you saw Mr. Brown in the
13 lineup that you remembered that he was out there;
14 isn't that correct?

15 A. Yes.

16 Q. And you also remembered that Ju-Ju came
17 by and talked to you later on after he first told
18 you about this ACE --

19 A. Yes.

20 Q. -- with Shon, Ghetto and Deuce; is that
21 correct?

22 A. Did you say "with Shon, Ghetto and
23 Deuce".

24 Q. With Shon, Ghetto -- in other words, the
25 story about Shon, Ghetto and Deuce at the ACE?

1 A. Oh, yes, ma'am.

2 Q. So the only reason why you named Deuce in
3 your statement was not based on something you saw,
4 but what Ju-Ju told you?

5 A. The only reason why what now?

6 Q. You named Deuce in your first
7 conversation on the very day that Ms. Jones was
8 murdered. Okay?

9 A. Uh-huh.

10 Q. The only reason why you named Deuce was
11 because of something Ju-Ju told you?

12 A. I seen him out there that morning, but
13 the only reason why I thought he done it was after
14 Ju-Ju mentioned his name.

15 Q. Okay. And it didn't occur to you to
16 mention everybody else who was out there when it
17 first happened?

18 A. When it first happened.

19 Q. When you first saw it, all of them
20 together. Is that what you're saying?

21 A. Yes.

22 Q. It didn't occur to you to mention
23 everybody?

24 A. In my first statement it should have been
25 in there. I did mention Doby before I seen him in

1 the lineup. But he did not get in the car, so
2 that's why I didn't put it in the statement. But
3 I did mention his name.

4 Q. Who did you mention it to?

5 A. Sergeant Kennedy.

6 Q. So that's something else that you didn't
7 see in your first statement and you didn't think
8 to bring out?

9 A. (Shakes head.)

10 Q. So in your second statement when you
11 mentioned that, "When I saw "D" in the lineup I
12 remembered that he was out there, too," is that
13 true or false?

14 A. That's true.

15 Q. Okay. So you had forgotten in your first
16 statement?

17 A. No, I hadn't forgotten in the first
18 statement. I said I remembered he was out there.
19 I mean, they didn't put that in my first
20 statement. That's what me and Sergeant Kennedy
21 was talking about.

22 Q. Okay?

23 MS. MULDROW: Pass the witness.

24 THE COURT: Mr. Rizzo.

25 MR. RIZZO: Just a couple of

1 questions.

2 REDIRECT EXAMINATION

3 BY MR. RIZZO:

4 Q. Just so we can be clear about a couple of
5 things. You gave two statements. You gave an
6 initial statement after you called the police the
7 first time; is that right?

8 A. Yes.

9 Q. And I believe you just testified that you
10 named Deuce because of something that Ju-Ju had
11 told you?

12 A. Yes.

13 Q. All right. You had another
14 conversation -- a conversation with Ju-Ju, is that
15 correct, after that?

16 A. Yes.

17 Q. And he cleared some things up concerning
18 Deuce's involvement, did he not?

19 A. Yes.

20 Q. And after that, you no longer thought it
21 was Deuce, did you?

22 A. No, sir.

23 MS. MULDROW: Leading, Your Honor.

24 THE COURT: Overruled. You may
25 answer the question.

1 THE WITNESS: Excuse me.

2 THE COURT: You may answer that
3 question.

4 A. I forgot the question he just gave me.

5 Q. (By Mr. Rizzo) I'll ask it again. You
6 had a second conversation with Deuce -- I'm
7 sorry -- with Ju-Ju. And when you had that
8 conversation, your opinion changed as to who -- I
9 believe you testified as to who the third person
10 was, did it not?

11 A. Yes.

12 Q. Okay. Did you call and tell the police
13 that?

14 A. Yes.

15 Q. And did you put that in your second
16 statement?

17 MR. RIZZO: If I may approach this
18 witness.

19 THE COURT: Yes.

20 Q. (By Mr. Rizzo) (Indicating.)

21 A. Yes.

22 Q. So you did clear it up with them and did
23 clear up your first statement?

24 A. Yes.

25 Q. All right. The other thing I was going

1 to ask you has to do -- and by clearing up, I'm
2 asking, did you -- did you name Doby as a third
3 party?

4 A. Yes.

5 Q. Okay. Did you also -- just as a matter
6 of clarification. At the time that person -- you
7 said that you saw Deuce out there at some point at
8 The VA that morning, I recall you saying?

9 A. Yes.

10 Q. At the time that -- at the time that Shon
11 was seen loading this gun and at the time that
12 Ghetto and Shon had made comments about getting
13 ready to go do something, was Deuce near that car?

14 A. No.

15 Q. Was this Defendant near that car?

16 A. He was near it, but not right by it. He
17 was behind it. I'll say about two or three inches
18 from it. He was all the way up on the slab. They
19 was parked in the driveway. He was like up that
20 way by the slab.

21 Q. In front of the car or behind the car?

22 A. No, behind the car.

23 Q. Was the car backed in?

24 A. Yes.

25 Q. So he was standing right by the trunk on

1 the sidewalk there?

2 A. No. He -- this is the car backed up
3 right here (indicating). He was, like, on the
4 sidewalk, on the slab, like, going to the sidewalk
5 by the mailbox, up that way.

6 Q. Was Deuce anyplace around there at the
7 time that that comment was made?

8 A. No.

9 MR. RIZZO: Pass the witness.

10 THE COURT: Ms. Muldrow.

11 RECROSS EXAMINATION

12 BY MS. MULDROW:

13 Q. And, of course, we're in agreement that
14 Doby's name is not mentioned at all in Defendant's
15 2, your first statement?

16 A. No.

17 Q. Correct?

18 MS. MULDROW: Ma'am, will you mark
19 this as Defendant's 3?

20 (Defendant's Exhibit No. 3 marked.)

21 Q. (By Ms. Muldrow) I'm going to ask you,
22 ma'am, if you will read where I have it marked in
23 blue, that sentence, and the first two sentences
24 ending in "too," t-o-o. So that one and then
25 these first two (indicating)?

1 A. To right here (indicating)?

2 Q. Yes, ma'am.

3 A. (Witness complies.)

4 Q. Now, this was on the day of the lineup
5 where you saw Mr. Brown whom you recognize as Doby
6 in the lineup; is that correct?

7 A. Yes.

8 Q. And this was in the afternoon. This was
9 after the lineup that you gave this statement --

10 A. Yes.

11 Q. -- correct?

12 And the same placement of
13 signatures, meaning your name was signed on each
14 page and it looks like a notary by the name of Ted
15 Bloyd was signed underneath your signature; is
16 that correct.

17 A. Yes.

18 Q. And the information about perjury is on
19 the statement also; is that correct?

20 A. Yes.

21 Q. And the date and you swore to it?

22 A. Yes.

23 Q. And it appears that when you gave this
24 statement, you indicated that you saw the lineup
25 and you recognized "D," "D" being Doby; is that

1 correct?

2 A. Yes.

3 Q. And you indicated when you saw him in the
4 lineup, you realized that you saw him on the
5 morning of the incident at the check cashing
6 place; is that correct?

7 A. Yes.

8 Q. And that in your earlier statement when
9 you mentioned that you had seen Shon, Ghetto and
10 Deuce standing by the white Lumina when Shon took
11 out a .45 and loaded it, it's in this statement,
12 correct, you just read it, didn't you?

13 A. Yes.

14 Q. Okay. It has your name on it, correct?

15 A. Yes.

16 Q. Not lined out at all as being incorrect,
17 is it?

18 A. Yes.

19 Q. Yes, it is or, no, it is not lined out?

20 A. Yes, it's in there. It's lined up. I
21 signed it.

22 Q. Okay. And that when I saw "D" in the
23 lineup, I remembered that he was out there. That
24 was only after you saw the lineup and you realized
25 that he was in the lineup; is that correct?

1 A. No, ma'am. I just told you earlier I
2 told them in my first statement about him, but
3 when I mentioned that he did not get in the car, I
4 guess they did not put my statement in my first
5 statement.

6 Q. Okay. And just like in the first
7 statement, you didn't line out the part about
8 Deuce getting in the Grand Am with Ghetto and Shon
9 following the Grand Am?

10 A. No, I did not mention it.

11 Q. Okay. But it just happens to be there;
12 is that correct?

13 A. If you say so.

14 Q. Well, it's your signature?

15 A. Okay.

16 Q. Isn't that your signature on there?

17 A. Yes, it is.

18 Q. Okay.

19 MS. MULDROW: Pass the witness.

20 THE COURT: Mr. Rizzo.

21 MR. RIZZO: Just one quick question.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. RIZZO:

24 Q. Your corrected statement was actually
25 made just a day later, was it not? You can look

1 on the date?

2 A. A day later what?

3 Q. It was a day later. It was on the 5th of
4 April; is that right?

5 A. If that's what it happened to be on the
6 date, the 5th of April.

7 Q. Okay. Let me see if I could, the first
8 one was actually on the 3rd, so it was two days
9 later. So within a very short period of time?

10 If you could look through and it was
11 just a -- this is the one where you explained why
12 you named -- incorrectly named Deuce and you
13 correctly named Doby. If you look through this,
14 in this little page and a half statement you name
15 this Defendant approximately ten times in just a
16 page and a half, don't you?

17 You can go through and count it if
18 you want.

19 A. Yes.

20 Q. Okay.

21 MR. RIZZO: Nothing further, Your
22 Honor.

23 THE COURT: Ms. Muldrow.

24 FURTHER RECROSS-EXAMINATION

25 BY MS. MULDROW:

1 Q. And eight times before the lineup it was
2 Deuce, correct?

3 MR. RIZZO: Objection. Asked and
4 answered.

5 THE COURT: Sustained.

6 Q. (By Ms. Muldrow) And \$10,000 after the
7 lineup; isn't that correct?

8 A. When was the lineup.

9 Q. \$10,000 of CrimeStopper's money one
10 month -- anywhere from three weeks to one month
11 after the lineup; isn't that correct?

12 A. Yes.

13 MS. MULDROW: Pass the witness, Your
14 Honor.

15 MR. RIZZO: Nothing further.

16 THE COURT: You may step down,
17 ma'am.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Let's go to
20 lunch.

21 Please retire to the jury room.

22 THE BAILIFF: All rise.

23 (Jury retired.)

24 (Noon recess.)

25 AFTERNOON SESSION